IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10602 OF 2004

1. The Solapur Social Urban Cooperative
Bank Ltd (Through its Manager-Shri Shakil
Razidduin Peerzade, Sideeshwar Peth,Solapur.

.. Petitioner

versus

1. Sou.Nigam A.Mannan Beskar
2. Sou.Irfan Begum Jabbar Beskar
3. M/s Beskar Steel Corporation .. Respondents

Mr.V.A.Thorat, Senior Advocate i/b Mr.Surel S.Shah
for Petitioner

CORAM : D.G.KARNIK, J

JUDGMENT RESERVED ON: 2nd March, 2006

JUDGMENT PRONOUNCED ON: 14th March, 2006

P.C.

1. The question of law that arises in this Writ Petition is : Whether section 9A of the Code of Civil Procedure,1908 in relation to its application in the State of Maharashtra as introduced therein by the Code of Civil Procedure (Maharashtra Amendment) Act, 1977 (Maharashtra Act No.LXV of 1977) stands repealed by section 32 of the Code of Civil Procedure (Amendment) Act, 1999 (Central Act No.46 of 1999) and /or by section 16 of the Code of Civil Procedure (Amendment) Act, 2002 (Central Act No.22 of 2002.) ?

2. I have heard Mr.V.A.Thorat, Senior Advocate for the petitioner. Mr.S.S.Patwardhan, Advocate for the petitioner in Writ Petition No. 985 of 2006 and Mr.S.S.Dani, Advocate for the respondents in Writ Petition No.730 of 2006 also appeared and requested to be heard as according to them the question of law which is stated in para 1 above also arises in their Writ Petitions and any decision thereon was likely to affect their petitions also. Their request to be heard was therefore granted and they were also heard on the question of law.

3. In suit bearing No.1193 of 2005 filed in the Co-operative Court, Solapur by the respondents 1 and 2 the petitioner made an application under section 9A of the Code of Civil Procedure for framing a preliminary issue about jurisdiction of the Court and maintainability of the dispute (suit) in the Co-operative Court in the form in which it was framed. By an order dated 7th December, 2002 the Co-operative Court rejected the application and declined to frame the preliminary issue and dismissed the petitioner's application. The revision application bearing RA no.75 of 2003 filed by the petitioner in the Co-operative Appellate Court was also dismissed by the order dated 1st September, 2004. That decision is impugned in the

present petition.

4. Mr.Thorat, learned Senior Advocate for the petitioner submitted that the application for framing of a preliminary issue was filed under section 9A of the Code of Civil Procedure and further submitted that section 9A applies also to the Co-operative Courts. I proceed on that assumption. The question however that arises is whether section 9A of the Code of Civil Procedure, 1908 as applicable in the State of Maharashtra stands repealed by section 32 of the Code of Civil Procedure (Amendment) Act, 1999 and section 16 of the Code of Civil Procedure (Amendment) Act, 2002; because if section 9A stands repealed then obviously application under section 9A could not have been entertained by the Co-operative Court.

Legislative Power of Parliament and the State Legislatures to enact laws governing Civil Procedure

5. Entry 13 of List III (alsocalled as the Concurrent List) of 7th Schedule to the Constitution of India confers a power both on Parliament and the Legislature of any State to enact any law relating to : " Civil Procedure including all matters included in the Code of Civil

Procedure at the commencement of this Constitution ". The Code of Civil Procedure falls under Entry 13 of the Concurrent List. Under clause (2) of Article 246 of the Constitution of India Parliament and, subject to clause (1) of Article 246, the Legislature of any State have power to make laws in respect of any of the matters enumerated in the Concurrent List. Therefore, Parliament as well as the Legislature of any State can make a law for regulating the procedure to be followed in Civil Courts.

6. Clause (1) of Article 254 of the Constitution of India provides that if any provision of any law made by the Legislature of a State is repugnant to any provision of law made by Parliament or to any provision of an existing law with respect to one of the matters enumerated in the concurrent list, then subject to the provisions of clause (2), the law made by Parliament whether passed before or after the law made by the Legislature of such State, or as the case may be the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of repugnancy, be void. Clause (2) of Article 254 provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by Parliament or

an existing law with respect to that matter then the law made by the Legislature of the State shall, if it has been reserved for consideration of the President and has received his assent, prevail in that State. Proviso to clause (2) of Article 254 provides that nothing in clause (2) shall prevent Parliament from enacting at any time any law with respect to the same subject matter, including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

7. The upshot of Articles 246 and 254 of the Constitution of India is that in respect of the matters specified in the concurrent list (List III of 7th Schedule to the Constitution of India) both Parliament and the Legislature of a State have a power to pass a law. If laws are passed by both Parliament and the Legislature of a State in respect of the same subject matter and laws are complimentary to and do not in any way conflict with each other, both laws apply in that State. However, if there is any repugnancy in any law made by Parliament, whether passed before or after the law made by the Legislature of such a State, and the law made by the Legislature of a State the law made by Parliament shall prevail and the law made by the Legislature of the State shall to the extent of repugnancy be void. This is however, subject to one exception. If after the law is made by

Parliament on a subject covered by the concurrent list the Legislature of a State passes any law, and the law passed by the Legislature of the State has been reserved for consideration of the President and has received his assent, the law made by the Legislature of the State shall prevail in that State. However, the assent of the President to the law passed by the Legislature of a State would not prevent Parliament from enacting at any time any law with respect of the same subject matter including a law adding to, amending, varying or repealing the law made by the Legislature of the State.

8. The Code of Civil Procedure, 1908 (for short the Code) is a pre-constitutional law and an existing law within the meaning of Article 254 of the Constitution of India. Though, therefore the Legislature of a State is empowered to pass any law providing for the matters governing the procedure in Civil Courts, if there is any repugnancy in the law made by a Legislature of a State and the Code the latter would prevail. If a law made by the Legislature of a State containing any provision relating to the procedure in Civil Courts is reserved for the assent of the President and has received his assent then notwithstanding any repugnancy between that law and the Code the former shall prevail in that State. This is however,

subject to the proviso to sub clause (2) of Article 254, which says that notwithstanding the assent received from the President for any law passed by the Legislature of a State it is competent for Parliament to pass any subsequent law, amending, varying or repealing the law so made by the Legislature of the State.

Position in Maharashtra

9. The Legislature of Maharashtra added section 9A to the Code in relation to its application in the State of Maharashtra initially in the year 1970 by the Code of Civil Procedure (Maharashtra Amendment) 1970. (hereinafter referred to as " the Maharashtra Amendment Act of 1970 "). However, the Maharashtra Amendment Act of 1976 was repealed and section 9A was again added in the Code in relation to its application in the State of Maharashtra by the Code of Civil Procedure (Maharashtra Amendment) Act, 1977 (Maharashtra Act No.LXV of 1977) (hereinafter referred to as "the Maharashtra Amendment Act of 1977). The Maharashtra Amendment of 1977 was reserved for the assent of the President and was published in the Maharashtra Government gazette on 9th December, 1977 after having received the assent of the President. Thus, in relation to the State of Maharashtra, the Code stood amended by insertion of section 9A therein by

virtue of the Maharashtra Amendment of 1977. Section 9A which was inserted in the Code, under the Maharashtra Amendment Act of 1977 reads as under:

Sec 9A:

" Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue: (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if at the hearing of an application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anytl contained in sub-section (1) at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction. - Maharashtra Act"

Two Central Amendment Acts of 1999 and 2002

10. In the year 1999 several amendments were introduced in the Code by Parliament by enacting the Code of Civil Procedure (Amendment) Act, 1999 (Act No.46 of 1999). (hereinafter referred to as the Central Amendment Act of 1999). Sub section (1) 1 of section 32 of the Central Amendment Act, 1999 reads as under :

> 32. "Repeal and savings.- (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall,except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed. "

Unfortunately, there was resistance from lawyers and various bar associations for the implementation of the Central Amendment Act of 1999. It is not necessary to go into the reasons for the opposition. The Central Amendment Act of 1999 was therefore not brought into force immediately. The Central Amendment Act of 1999 (except section 16 and 18 (iii) thereof has, however, been brought into force with effect from 1st of July, 2002. Further amendments were made in the Code by the Code of Civil Procedure (Amendment) Act, 2002 (Central Act No.22 of 2002) (hereinafter referred to as the Central Amendment Act of 2002). Central Amendment Act of 2002 has also come into force with

effect from 1st July, 2002. Sub section (1) of section 16 of the Central Amendment Act of 2002 is identical with sub section (1) of section 32 of the Central Amendment Act of 1999. It is therefore necessary to consider whether section 9A as introduced in the Code in its application in the State of Maharashtra stands repealed with effect from 1st July 2002 by the Central Amendments Acts of 1999 and 2002.

SUBMISSIONS OF MR. DANI

11. Mr.Dani submitted that section 9A introduced into the Code in this application to the State of Maharashtra is inconsistent with the Code as amended by the Central Amendment Acts of 1999 and 2002 and therefore stands repealed by section 32 of the Central Amendment Act of 1999 and section 16 of the Central Amendment Act of 2002. In support of his submissions, Mr.Dani relied upon three decisions of the Supreme Court namely, Ganpat Giri vs Second Additional District Judge, Baliya reported in 1986 1 SCC 615, Kulwant Kaur and ors vs Gurdial Singh Mann reported in (2001) 4 SCC 262, and Iridium India Telecom Ltd vs Motorola Inc reported in (2005) 2 SCC 145.

12. In Ganpat Giri (supra) the Supreme Court was called upon to consider the effect of section 97

(1) of the Code of Civil Procedure (Amendment) Act of 1976 (for short the Central Amendment Act of 1976) on order 21 Rule 72 of the Code as amended by the Allahabad High Court and prevailing the State of Allahabad. Section 97 (1) of the Central Amendment Act of 1976 reads thus:

> " Any amendment made or any provision inserted in the principle Act (i.e. Code of Civil Procedure) by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principle Act as amended by this Act stand repealed. "

Interpretating section 97 (1) of the Central Amending Act of 1976 the Supreme Court held that effect that section 97 (1) was that all local amendments made to any of the provision of the Code either by a State Legislature or by a High Court which were not consistent with the Code as amended by the Central Amending Act of 1976 stood repealed irrespective of whether the corresponding provision in the Code had been amended or modified by the Amending Act. The Supreme Court held that amendment to rule 72 of Order 21 which was in force in the State of U.P. prior to 1st February 1977 i.e. the date of the commencement of the Amendment Act of 1976 being inconsistent with the Code stood repealed by section 97 (1).

13. In Kulwant Kaur (supra) another bench of two Judges of the Supreme Court followed its earlier

decision in the case of Ganpat Giri (supra). In Iridium India Telecom Ltd (supra) the Supreme Court again reiterated the position as laid down in its earlier decision in the case of Ganpat Giri (supra). After quoting Ganpat Giri, in para 46 of its judgment the Supreme Court observed :

> " It is obvious that what was done by section 97 (1) of the Amending Act was to sweep away the amendments made or provisions inserted in the principelAct by the State Legislature or High Court in exercise of its delegated power of legislation, and to declare all such amendments inconsistent with the provisions of the Code would stand repealed. "

14. Decisions of the Supreme Court clearly lays down that all amendments made in the Code by any State Legislature prior to coming into force of the Central Amendment Act of 1976 stood repealed by section 97 (1) thereof. In my view, section 32 of the Central Amendment of 1999 and section 16 of the Central Amendment Act of 2002 are pari materia with section 97 (1) of the Central Amendment Act of 1997. Section 32 and section 16 of the Central Amendments Act of 1999 and 2002 respectively, in my view, repeal all amendments made by any State Legislature in the Code prior to 1st July, 2002 except those amendments which are consistent with the Code.

Submissions of Mr.Thorat for the Petitioner

15. Mr.Thorat, learned senior counsel submitted that section 32 of the Central Amendment Act of 1999 and section 16 of the Central Amendment Act 2002, does not repeal all amendments made by the Legislature of any State in the Code. But only those amendments made by the Legislatures of any State, which are not consistent with the Code stand repealed. He laid emphasis on the words "except in so far as such amendment or provisions are consistent with the principal Act " appearing sub section (1) of sections 32 and 16 of the Central Amendment Acts of 1999 and 2002 respectively. He therefore submitted that only those amendments made by the State Legislatures which are inconsistent with the Code as amended by the Central Amendment Act of 1999 and the Central Amendment Act of 2002 are repealed by section 32 and section 16 of the respective Acts. He further submitted that section 9A as inserted by the Legislature of the State of Maharashtra in the Code is consistent with and furthers the object of the Central Amendment Acts of 1999 and 2002. Therefore, according to the learned counsel, section 9A does not stand repealed either by the Central Amendment Act of 1999 or the Central Amendment Act of 2002. The Code is a procedural enactment and contains provisions governing the procedure to be adopted in relation to trial of suits and other civil proceedings. According to Mr. Thorat, though the provisions of

the Code as originally enacted were good and are still good as they ensure fair and just trial and adjudication of any civil dispute, they caused delays; and in order to curtail the procedural delays and to ensure fair but speedy trial without undue delays, that Central Amendment Act of 1999 and Central Amendment Act of 2002 are enacted. The object of the Code to ensure fair trial is not in any way done away with by the Central Amendment Act of 1999 and Central Amendment Act of 2002 but only some improvements in the procedure are made to ensure not only fair but speedy trial as well. Speedy trial is undoubtedly an essential ingredient of a fair trial. Section 9A as introduced by the Legislature of the State of Maharashtra, according to the learned counsel, ensures cutting down the time of trial by ensuring that judicial time is not wasted in recording of the evidence where the entire suit can be disposed of on a preliminary issue of jurisdiction. He submitted that section 9A provides for framing of preliminary issue as to the jurisdiction of the Court where such an issue is raised by the defendant at the hearing of an application for any interim relief. According to the counsel, if the Court has no jurisdiction to entertain and try the suit, it would be waste of time if the Court were to record evidence on all issues at the trial and then come to the conclusion that it does not have or never had the jurisdiction

to entertain and try the suit. Therefore, where a contention is raised by the defendant at the hearing of an application for interim relief that the Court has no jurisdiction to entertain and try the suit then it would be appropriate to decide such contention at the threshold and this is not in any manner inconsistent with the Code as amended by the Central Amendment Act of 1999 and the Central Amendment Act of 2002, both of which aim at improving the procedure for early disposal of the suit. He invited my attention to some of the amendments made by the Central Amendment Act of 2002; by section 9 the defendant is required to file the written statement within 30 days from the date of service of the summons on him. This prohibits frequent and long adjournments by the defendants for filing of the written statement. By section 12 a provision is made for recording of the evidence by way of examination-in-chief on affidavits, sparing judicial time required in recording of the examination-in-chief by a Judge. By the same section, a provision is made for appointment of a Court Commissioner for recording of cross examination and re-examination of the witnesses thus sparing further judicial time in recording of the evidence. It is not necessary to refer to all amendments made by the Central Amendment Acts of 1999 and 2002 with a view to expedite the hearing and trial of the suit.

Mr.Thorat submitted that section 9A as introduced in the State of Maharashtra is consistent with this object of the Central Amendment Acts of 1999 and 2002 of curtailing the time required for a judicial trial. If a suit can be disposed of for want of jurisdiction and is so disposed of by framing a preliminary issue under section 9A then judicial time would certainly be saved. Section 9A is therefore consistent with the provisions of the Code as amended by the Central Amendment Acts of 1999 and 2002. The argument, attractive as it is, does not stand close scrutiny.

Reasons

16. The Code makes a comprehensive provision for trial of a suit. A suit begins with the lodging of a plaint. The plaint is then examined by the office. Order 7 Rule 11 of the Code enables a Court to reject the plaint where it does not disclose a cause of action, or the relief claimed is undervalued, or is properly valued but the plaint is written on a paper insufficiently stamped, or where the suit appears from the statement in the plaint to be barred by any law. Two new grounds were added for rejection of a plaint by the Central Amendment Act of 1999. After the summons is issued and served the defendant appears in Court either in person or through a

recognised agent-an Advocate. The defendant is then required to file his written statement within 90 days. After the written statement is filed the Court frames issues under Order 14 of the Code. Rule 2 of Order 14 of the Code requires the Court to pronounce judgment on all issues notwithstanding that the suit can be disposed of on a preliminary issue. Sub rule (2) of rule 2 is an exception which empowers the Court to decide the issue of jurisdiction or the issue relating to a bar created to the suit by any law for the time being in force as a preliminary issue. The Code also contemplates issuance of interlocutory orders pending trial of the suit. In particular, Order 38 of the Code makes a provision for arrest and attachment before judgment and Order 39 makes a provision for grant of temporary injunctions. Order 40 provides for appointment of receiver of any property before or after the decree. Though at the hearing of an application for an interlocutory relief the Court is not required to make final adjudication as to its jurisdiction to entertain and try the suit, as held by the Supreme Court in Shivkumar Chaddha vs Delhi Municipal Corporation reported in (1993) 3 SCC 161, in order to get an interim relief the plaintiff is required to satisfy the Court not only that he has a strong prima facie case but also about the maintainability of the suit. The Court is entitled, nay bound to reject an application for

interim relief if the Court, prima facie, comes to the conclusion that it has no jurisdiction or that the suit is not maintainable. This prima facie finding on jurisdiction of the Court and maintainability of the suit, when the same is objected to, is inherent for considering whether the plaintiff has a strong prima facie case. Because, if prima facie, the suit itself is not maintainable, the plaintiff would not have a strong prima facie case. However, the view or the finding that the Court has or does not have a jurisdiction to entertain and try the suit reached prima facie at the stage of hearing of an application for an interim relief is not final. Even if the Court records its prima facie view that the suit is not maintainable or that it has no jurisdiction, it would not at the interlocutory stage dismiss the suit. It would only refuse an interim relief and proceed with the trial in due course. At the hearing of the suit the Court upon consideration of the entire evidence adduced before it may reach a different conclusion as to its jurisdiction and decree the suit. This is because the findings reached at the hearing of an interim applications are tentative and based on prima facie evaluation of the material then available before the Court. Ordinarily, at the time of hearing of interlocutory applications, the most common of which are applications for injunctions, evidence is not

recorded but, the Court decides whether interlocutory relief could be granted or not on the basis of affidavits.

17. Section 9A of the Code is a departure from the ordinary rule that the finding as to the jurisdiction of the Court made at the hearing of an interlocutory application is only primafacie and tantative and not final. Rule 9A of the Code of Civil Procedure as introduced in the Code by the Maharashtra Amendment Act of 1977 requires the Court to finally hear and adjudicate upon its jurisdiction where the defendants raises an objection to the jurisdiction of the Court. In Meher Singh vs Deepak Sawhney, reported in 1991 (1) Bom CR 107, a division bench of this Court was required to consider whether under section 9A as introduced by the Maharashtra Amendment Act of 1977 the Court was required to permit the parties to adduce evidence and then to decide finally the issue of jurisdiction. In para 10 of its judgment the Court observed :

> " Section 9-A is a departure from the procedure established for deciding the preliminary issue as prescribed under Order XIV, Rule 2 of Civil Procedure Code. On many occasions, it is not always proper to pass an order of hearing the preliminary issue with regard to maintainability of a suit at the time of final hearing of the suit. If such issue is decided at an

earlier stage, rights of the parties can be crystallized. As stated earlier, section 9-A is a departure from the procedure prescribed under Order XIV, Rule 2 of the Code of Civil Procedure for achieving that object. For determination of the preliminary issue, which may be mixed question of law and facts, the parties are required to lead evidence. Without permitting the parties to lead evidence the issue of jurisdiction cannot be finally determined. If it was to be decided only for prima facie purpose for granting interim relief, then there was no necessity of adding section 9-A in the Civil Procedure Code. " (Underlining supplied)

18. The authoritative pronouncement of law by the division bench of this Court leaves no doubt that section 9A is a departure from the normal procedure to be followed by Civil Courts as to the time and manner of determination of the issue regarding jurisdiction. Section 9A requires the Court to finally adjudicate upon the issue of jurisdiction before the hearing of an application for interim relief departing from and contrary to the normal procedure contemplated by the Code. Section 9A is thus not consistent with the Code. In my view, therefore section 9A stands repealed by section 32 of Central Amendment Act of 1999 and also by section 16 of the Central Amendment Act of 2002.

19. At this stage, it would be useful to refer to the legislation by which section 9A was introduced into the Code. Section 9A was first added in the

Code by the Code of Civil Procedure (Maharashtra Amendment Act) 1970 (Maharashtra Act No.XXV of 1970). After 1970 the Code was amended by Parliament by the Code of Civil Procedure (Amendment) Act 1976 (Central Act No.CIV of 1976). (for short Central Amendment Act of 1976). Section 97 of the Central Amendment of 1976 inter alia provides that any amendments made in the Code by a State Legislature before the commencement of the Central Act of 1976 shall, except in so far as they are consistent with the Code, as amended by the Central Amendment Act of 1976 stand repealed. Section 97 of the Central Amendment Act of 1976 is similar to section 32 of the Central Amendment Act of 1999 and section 16 of Central Amendment Act of 2002. All these sections contemplate that all amendments made in the Code by a Legislature of any State prior to the passing of the respective Central Amendment Acts shall, except in so far as the State Amendments are consistent with the Code, stand repealed. The Legislature of Maharashtra considered the effect of section 97 of the Central Amendment Act of 1976 on section 9A of the Code as applicable in the State of Maharashtra. The State Legislature acknowledged that by section 97 of the Central Amendment Act of 1976 section 9A stood repealed. However, being of the opinion that section 9A, though inconsistent with the Code, should continue to be applicable in the State of

Maharashtra the State Legislature (of Maharashtra) passed the Maharashtra Amendment Act of 1977 and reserved it for the assent of the President which was granted on 9th December, 1977. The Preamble to the Maharashtra Amendment Act of 1977 reads as follows :

> " WHEREAS extensive amendments have been made in the Code of Civil Procedure, 1908 by the Code of Civil Procedure (Amendment) Act, 1976, enacted by Parliament.
>
> AND WHEREAS section 97 of this Amendment Act of 1976 provides inter alia that any amendments made in the said Code by a State Legislature before the commencement of that Act shall, except in so far as they are consistent with the said Code as amended by that Act, stand repealed.
>
> AND WHEREAS certain amendments have been made in the said Code in its application to the State of Maharashtra, or a part thereof, by the State Legislature :
>
> AND WHEREAS it is expedient to delete from the said Code in its application to this state the amendments made by the State Legislature which have become inoperative or redundant and to leave no room for any doubt, to re-enact such of them which may be inconsistent with the said Code as amended by the Amendment Act of 1976 but which are considered necessary in this State;
>
> AND WHEREAS it is therefore expedient further to amend the said Code in its application to this State for the purposes hereinafter, appearing; It is hereby enacted in the Twenty-eighth Year of the Republic of India as follows :"
> (Underlining supplied)

20. Thereafter by section 3 of the Maharashtra Amendment Act, of 1977 the Legislature of Maharashtra re-introduced section 9A in the Code as applicable in the State of Maharashtra. The Preamble to the Maharashtra Amendment Act of 1977 and of section 3 thereof make it clear that even the Legislature of Maharashtra considered that section 9A as introduced in the Code in relation to its application in the State of Maharashtra was inconsistent with the provisions of the Code and therefore felt the need of re-introducing it in the Code by means of an amendment. It is true that the interpretation put on section 97 of the Central Amendment Act of 1976 by the Legislature of Maharashtra that it repealed section 9A of the Code is not binding on the Court while interpretating section 32 or the Central Amendment Act of 1999 or section 16 of the Central Amendment Act of 2002. However, I have independently come to the conclusion that section 9A of the Code as introduced in the Legislature of Maharashtra by Maharashtra Amendment Act of 1977 is not consistent with the Code and in the year 1977 the very Legislature of Maharashtra also thought that section 9A was not consistent with the Code and therefore re-introduced it by the Maharashtra Amendment Act of 1977. This is only reinforces the view that I have taken.

21. For these reasons, I am satisfied that section 9A of the Code as applicable in the State of Maharashtra stands repealed by section 32 of the Code of Civil Procedure (Amendment) Act, 1999 and also by section 16 of the Code of Civil Procedure (Amendment) Act of 2002.

22. I therefore pass the following order :

The Writ Petition is rejected. The order passed by the Co-operative Court refusing to frame the preliminary issue regarding jurisdiction and the order of the Cooperative Appellate Court rejecting the revision application of the petitioner is confirmed.

(D.G.KARNIK, J)

rng.